IN THE HIGH COURT OF UTTARANCHAL, NAINITAL.

No. 10- COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING.

[Chapter VIII, Rule 32(2) (b)]

Criminal Jail Appeal No. 683/2001
(Old No. 2046/2000)

Bachan Singh … Appellant.

Vs.

State … Respondent.

AND

Criminal Jail Appeal No. 1801/2001

Bachan Singh … Appellant

Vs.

State of Uttaranchal … Respondent.

Decided on 18-7-2005

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

(Irshad Hussain, J.)

(B.S. Verma, J.)

Dated: 18-7-2005.

In the High Court of Uttaranchal at Nainital.

Criminal Jail Appeal No. 683/2001
(Old No. 2046/2000)

Bachan Singh S/o Devi Singh,
Resident of Village Mullagaon,
Patti Godar, Tehsil Barkot,
District Uttarkashi … Appellant.

Vs.

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AND

Criminal Jail Appeal No. 1801/2001

Bachan Singh S/o Devi Singh,
Resident of Village Mullagaon,
Patti Godar, Tehsil Barkot,
District Uttarkashi … Appellant.

Vs.

State of Uttaranchal … Respondent.

Sri Lokendra Dobhal, and Sri D.C.S. Rawat,
learned counsel for the appellant.
Sri G.S. Sandhu, learned A.G.A.

Coram: Hon'ble Irshad Hussain, J.
Hon'ble B.S. Verma, J.

Dated: 18-07- 2005.

(Per : Hon'ble Irshad Hussain, J.)

These are two criminal jail appeals, one of which was preferred from jail by the same above named accused, against the judgment dated 27-7-2000, passed by the then Sessions Judge, Uttarkashi in Sessions Trial No. 19/1999.

2- Briefly stated the prosecution case is as below:

3- Accused Bachan Singh is the husband of Smt. Mansa Devi (P.W.6), the daughter of Smt. Bel Dei deceased and he was residing in village Mullagaon, Patwari Circle Gatu, Tehsil Barkot, District Uttarkashi for the last more than six or seven years before the occurrence. The accused started quarrelling with the behaving indifferently towards his wife and mother-in-law. Despite reprimands by them and other villagers accused did not mend his ways and even assaulted his wife and mother-in-law about 8-10 days before the occurrence. He then left the village after giving

threats to the village people and even said that he will commit murder of one or two persons.

3- Accused was seen again in the village after about 6 or 7 days on 29-8-1999 and in the night he went inside the cattle enclosures (Chhani) of his mother-in-law Smt. Bei Dei in Sailana where she used to stay to keep watch on her cattle on committed her murder by throttling her neck. Next day on 30-8-1999 at about 1 P.M. the villager Kamal Das gave the information of the incident to Teeka Ram (P.W.1) who prepared the written report, Ext. Ka.1 and delivered it to the Naib Tehsil Barkot, on the basis of which check F.I.R., Ext.Ka.4 was drawn next day on 31-8-1999 at 7 A.M. at Patwari Circle Golu, Barkot and case against the accused was registered under Section 302 I.P.C. According to the prosecution when the accused was inside the 'Chhani' of the deceased and started throttling her neck witnesses Jayendra Singh (P.W.2), Teeka Ram (P.W.3) and Rajendra Singh (P.W.4) rushed to that place on hearing the sound noise of Smt. Bei Dei's she buffalo. As soon as they reached there they found that the accused came out from the rear door of the 'Chhani' of the deceased and spread away from there. The witnesses were not able to arrest him at that spot.

4- After registration of the case, Naib Tehsildar Barkot Sri Harshmani Chamoli (P.W.7) took up the investigation and he recorded the statements of the witnesses. He went to the scene of the occurrence and held inquest on the dead body of Smt. Bel Dei and prepared the inquest report, Ext. Ka.2 and other relevant documents. The dead body of Smt. Bel Dei was sent for post mortem which was performed by Dr. S.D. Joshi (P.W.5) at 11.45 A.M. on 1-9-1999 and prepared the post mortem report, Ext. Ka.3. The following ante-mortem injury was detected:

> Multiple bruises on the neck over the thyroid cartilage. On dissection there was echymosis over the muscle. Right side of high bone and laryngeal cartilage were fractured.

In the opinion of the medical officer the death was caused about 36 to 48 hours before the post mortem due to asphyxia as a result of throttling.

5- On completion of the investigation the charge sheet, Ext. Ka.10 submitted against the accused on 4-11-1999. The accused was committed to court of Sessions to stand trial. He was charged under Section 302 I.P.C. He pleaded not guilty and contended that he has been falsely implicated due to enmity and also because his wife Smt. Mansa Devi intended to keep some other person as her husband. At the trial prosecution to bring home the guilt to the accused relied upon the evidence of the above named witnesses and the incriminating circumstances said to have been satisfactorily proved by the evidence on record.

6- Learned Sessions Judge on the basis of his appreciation of the evidence in the case relied on the following incriminating circumstances to draw inference of the guilt of the accused:-

1- That the accused has been permanently residing in the house of his mother-in-law Smt. Bel Dei in the capacity of the husband of her daughter Smt. Mansa Devi.

2- That the accused started behaving indifferently and used to quarrel with these ladies for the last about four or five months before the occurrence.

3- That the accused even physical assaulted and gave beating to both these ladies, whereupon few days before the occurrence he was made to leave from the house by these ladies and other villagers.

4- That accused returned to the village and was seen there three or four days before the occurrence and in the night of the occurrence he visited his wife Smt. Mansa Devi who out of his fear left the house and spent the night in the house of her neighbour.

5- That accused was seen leaving the ‘Chhani’ of Smt. Bel Dei from the rear door soon after committing the murder by witnesses Rajendra Singh, Teeka Ram and Jayendra Singh and he ran away from there and could not be arrested by the witnesses.

6- That Smt. Bel Dei used to always remain all alone in her ‘Chhani’ and since she had no enemy other than the accused there was not likelihood of any other person entering in to her

‘Channi’ to commit her murder in the night of the occurrence.

7- That after the occurrence the search of the accused was made and he was ultimately arrested from the cave of Andhrada Dande, the place of his hiding, by the Investigating Officer.

7- Learned counsel for the accused persuasively argued that in view of the settled law in regard to the case based on circumstantial evidence each and every incriminating circumstance not only should be clearly established by reliable evidence but the circumstances so proved should form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the accused is possible. According to the learned counsel the first circumstance highlighted by the learned Sessions Judge make no sense because admittedly accused used to reside in the house of her mother-in-law in his capacity as the husband of her daughter Smt. Mansa Devi; that the witnesses examined are related to each other and their evidence being infirm and shaky was not sufficient to prove the other circumstances beyond doubt to make out a complete chain pointing to the guilt of the accused and that the inference of guilt drawn by the learned Sessions was not based on proper and fair appreciation of the evidence in the case. On the other hand learned A.G.A. supported that the conclusion drawn by the leaned Sessions Judge and submitted that the accused was made to leave the house of her mother-in-law but returned to the village four days before the night of the incident and out of grudge and enmity committed murder of his mother-in-law and was seen by the witnesses while leaving the place of the occurrence after committing the crime. According to the learned A.G.A. the circumstances referred to by the learned Sessions cumulatively establish a complete chain from which the conclusion of guilt only of the accused can safely be drawn and there being no merit in the appeal the same is liable to be dismissed.

8- The evidence of the prosecution has to be scrutinized in the above back-drop and to see as to whether each and every

incriminating circumstance has clearly been established by the evidence of the prosecution or not. As is argued by the learned counsel for the accused there is no dispute about the first circumstance that the accused has been residing in the houses of his mother-in-law in the capacity of the husband of her daughter Smt. Mansa Devi (P.W.6).

9- In regard to the second and third circumstances above that the accused had started behaving indifferently and used to quarrel with these ladies for the last about four or five months it need to be stated that according to Smt. Mansa Devi (P.W.6) the accused continued to reside peacefully with her and her mother-in-law for about six or seven years but after the death of her father Tej Singh, accused started quarreling with her and her mother and even assaulted her and her mother. She has however not disclosed as to why such a change in the behaviour of the accused was noticed and the reason which put the accused in such a frame of mind as to behave in this manner and gave beating to her and her mother. Although the informant Teeka Ram (P.W.1) also spoke of change in the attitude of the accused towards the wife and mother-in-law but no reason was also disclosed by this witness. Similar is the case with the other witnesses Jayendra Singh (P.W.2), Teeka Ram son of Sita Ram (P.W.3) and Rajendra Singh (P.W.4). It may also be stated here that P.W.2 and P.W.3 are the nephews of Smt. Mansa Devi whereas P.W.4 is the nephew of late Tej Singh, the father of Smt. Mansa Devi. If there was any specific cause or reason for the change in the behaviour of the accused towards his wife and mother-in-law despite his residing with them for the last six or seven years these witnesses were also expected to know about that reason or cause but from their evidence also nothing came out as may support the claim of the prosecution that the accused started behaving indifferently and not only quarreled with these ladies but also gave them beating.

9- It is also of significance that despite the allegation of such an indifferent behaviour of the accused for the last four or five months, Smt. Mansha Devi admitted that no complaint was ever made to the circle patwari or any one else. Even village Pradhan Teeka

Ram (P.W.1) do not claim to have received any complaint from the wife or mother-in-law of the accused about the accused's changed attitude and any quarrel with them.

10- From above we do not subscribe to the village of the learned Sessions Judge that accused has started quarrelling with the two ladies and even started assaulting them for the last about four or five months before the occurrence of the case. So far as the question of asking him to leave the village Mullagaon by his wife or in any case his mother-in-law is concerned it is pertinent to mention that the accused in his statement under Section 313 of the Code of Criminal Procedure specifically reiterated that he was never engaged in any quarrel with the ladies and that in fact his wife Smt. Mansha Devi was interested in keeping some one else as her husband with her. In this connection it is to be noted that according to the prosecution itself the relations between the accused and his wife and mother-in-law remained cordial till the father-in-law of the accused was alive. This has come in the evidence of Smt. Mansha Devi and Smt. Bei Dei was not her real mother but was her step mother and Smt. Bei Dei has had no issues of her own. Accused is the second husband of Smt. Mansha Devi and her earlier husband Jaipal Singh who also used to reside in her house had died about nine or ten years ago and thereafter the accused was brought in the house as son-in-law (Gharjawain) about six or seven years ago. Smt. Mansha Devi admitted in her cross-examination that one of her son was born after two or three years of the death of her first husband Jaipal Singh and she could not tell as to who was the father of the child. She was suggested that she was maintaining relations with many persons but she denied it. Learned counsel for the accused argued that Smt. Mansha Devi being a lady of suspicious character and she made the accused to leave her house and later on she made false claim that on account of accused's attitude and indifferent behaviour he was made to leave her village few days before the occurrence. Smt. Mansha Devi also gave out that the accused has not left for his house in pursuance of any compromise with her but himself left the village to take up residence in his own village out of some resentment. The

resentment or displeasure for the accused as argued by the learned counsel from evidence appear to be due to the conduct and behaviour of the wife Smt. Mansha Devi herself and it forced the accused to leave her village.

11- This aspect of the matter also need to be considered by another angle. Smt. Mansha Devi testified that with the help of her co-villagers an arrangement was made with the accused and in pursuance thereof she paid a sum of rupees five thousands to accused besides giving him a horse, clothes and utensils and then accused left her company and her village Mullagaon to reside in his own village about six or seven days before the occurrence. There is no evidence to corroborate her statement because no other witness has claimed his presence at the time of any such arrangement with the wife and mother-in-law under which the accused decided to leave the village Mullagaon. As stated above the witnesses of fact being relations of the wife of the accused they should have not only been aware of any such arrangement but at least one of them should have been present at the time of such settlement. Therefore we do not find it safe to place reliance on the evidence of Smt. Mansha Devi and in our view the learned Sessions Judge was not justified in placing reliance on her evidence in that regard.

12- For the reason aforesaid and the material on record we are convinced that the accused was not made to leave the village of his wife and mother-in-law by these ladies under any arrangement but out of resentment and displeasure on account of the attitude of his wife he left the village Mullagaon. In other words the circumstances mentioned at serial Nos. 2 and 3 were not satisfactorily proved by the evidence of the prosecution and the learned Sessions Judge was not justified in holding otherwise and to take a view against the accused.

13- The fourth circumstance pertains to the allegation that the accused returned to village Mullagaon few days before the occurrence and he even visited his wife Smt. Mansha Devi in the night of the occurrence who out of fear left the house and slept in her neighbour house. From the evidence of Smt. Mansha Devi (P.W.3) it is however not clear as to whether or not the accused

returned to village Mullagaon few days before the occurrence. According to her accused registered his presence at the door of her house in the night of the occurrence and wanted her to open the door to facilitate his entry in the house. She claimed to have not opened the door out of fear and later on went to sleep in the house of her neighbour. There is no independent evidence to corroborate her evidence in his regard. She was confronted with her statement under Section 161 of the Code of Criminal Procedure and the fact was brought on record that no such claim was even made by her before the Investigating Officer. She failed to give any explanation for this important omission in the statement and on account of it, it clearly appear that it proved a material contradiction in her evidence about the alleged presence of the accused in the village in the night of the occurrence. if her stand was true the neighbour in whose house she went to sleep in that night could have been examined in evidence. As the things stand the evidence of the witness being highly shaky and discrepant in that regard also leave no manner of doubt that the claim so made about the return of the accused to the village in the night of the occurrence was not satisfactorily proved by her evidence.

14- The evidence of Teeka Ram (P.W.1) about the alleged return of the accused to the village is also not convicting. This witness claimed to have seen the accused in the village again on 25th or 26th of August, 1999 but no other witness corroboration his version. Had it been so the accused's wife Smt. Mansha Devi would have been the best person to know all about the movement of her husband in the village, particularly when there is nothing to indicate that she used to remain confined to the four walls of her house or even has not gone out to see her mother who used to sleep in the 'Chhani' (cattle enclosures) away from the residential house. Witness Jayendra Singh (P.W.2) said nothing about the presence of the accused in the village some time before the occurrence and witness Teeka Ram (P.W.3) claimed that he merely heard from others that accused returned to the village some time in the night of the occurrence. the fourth witness Rajendra Singh (P.W.4) also said nothing about it and in the totality of the circumstances of the

case and the evidence on record the evidence of these witnesses also failed to prove beyond doubt that accused returned to the village Mullagaon and was seen there three or four days before the occurrence and in the night of the occurrence he went to his wife Rajendra Singh who out of his fear went to sleep in her neighbour's house. The learned Sessions Judge wrongly placed implicit reliance on the evidence of Smt. Mansha Devi in that regard when there was no positive corroboration to her evidence which was otherwise also infirm and discrepant and further that the evidence of Pradhan Teeka Ram (P.W.1) could not have been taken by the learned Sessions Judge to establish beyond doubt this incriminating circumstance against the accused. In otherwise we are of the view that this circumstance was not proved satisfactorily against the accused.

15- The next circumstance mentioned at serial No.5 is the most important incriminating circumstance in the case and it pertains to the claim of the prosecution that the accused was seen leaving the 'Chhani' of Smt. Bei Dei deceased from the rear door soon after committing her murder by witnesses of the case and he was even successful in making his escape possible despite chase by the witnesses. As stated above the written F.I.R., Ext. Ka.1 of the case was prepared by village Pradhan Teeka Ram (P.W.1) on the information of Kamal Das. The information was received by him at about 1-2 P.M. on 30-8-1999 and the information given to him was that the murder of Smt. Bei Dei had been committed some time in the night between 29/30-8-1999 and it was suspected that the murder might have been committed by the accused Bachan Singh. On the basis of this suspicion he was nominated as the culprit in the said F.I.R. The case of the prosecution was that Kamal Das was sent to inform the said village Pradhan by witnesses P.W.1, P.W.3 and P.W.3 who have reached the 'Chhani' of Smt. Bei Dei in the night of the occurrence on hearing her alarm and sound noise of her she-buffalo and have seen the accused going out of the rear door of the 'Chhani' of the deceased and when these witnesses entered inside the 'Chhani' Smt. Bel Dei was found dead having bleeding from her mouth and tongue protruded from the mouth. Learned

counsel for the accused vehemently argued that the claim of the witnesses do not appear convincing because firstly their claim that they were able to reach the 'Chhani' of the deceased in time on hearing any alarm is unbelievable and secondly there being no source of light their claim that they saw and identified the accused while leaving the 'Chhani' of the deceased from rear door and making his escape possible from there on being chased by the witnesses is not at all convincing. Considering the totality of the circumstances of the case and the evidence of these witnesses the submission appear sustainable and it cannot safely be believed that these witnesses reached there in time and saw the accused and identified him while running from the rear door of the 'Chhani' of the deceased in the night of the occurrence.

16- The reasons are that Jayendra Singh (P.W.2) gave out that the night of the occurrence was dark. He however claimed that a person could be identified in the darkness also but we do not find it safe to accept his claim considering the topography of the place of the occurrence. Ext. Ka.6 is the site-plan of the place of the occurrence. According to Investigating Officer Harshmani Chamoli (P.W.7) 'Chhani' of Uttam Singh was situate at a distance of about 15 meters from the 'Chhani' of deceased whereas the 'Chhani' of witness Rajendra Singh (P.W.4) was situate at a distance of about 30 meters and that of witness Teeka Ram son of Sita Ram (P.W.3) at a distance of 150 meters and there was only cattle passage on the hillocks to reach these 'Chhanis' from the village or from one 'Chhani' to another. Considering this topography even if witnesses were to hear any alarm or sound noise of any she-buffalo they must have taken some time to compose themselves before leaving towards the 'Chhani' of the deceased. We are not inclined to believe that these witnesses could have reached in time at the 'Chhani' of the deceased and could have identified the accused in the dark night while leaving the 'Chhani' of the deceased from the rear door and running away from their reach. It is also evidence that the witnesses became conscious of the dark night and improbability in fixing the identity of the accused and therefore they tried to improve upon their evidence to suggest

that it was probably dawn time and any person could be identified or recognized at that our of the day. For instance Jayendra Singh while claiming that it was dark night also gave out that by the time the accused came out of the 'Chhani' of the deceased some morning brightness had started appearing and the accused was thus identified by him. Witness Teeka Ram (P.W.3) made similar claim that there was some darkness and morning brightness had started to appear when he heard alarm at this 'Chhani' and went towards the 'Chhani' of the deceased. In cross-examination he went out to say that when the accused was seen coming out of the 'Chhani' of the deceased it was not dark but there was already day light. This is contrary to the claim made by witness Jayendra Singh. Similar claim was made by Rajendra Singh who claimed that the occurrence took place at about five in the morning and there was sufficient brightness of the day and the accused was then seen coming out of the rear door of the 'Chhani' of the deceased. It is thus evidence that there is absolutely no consistency in the evidence of the witnesses in regard to the claim and as stated above they tried to reconcile their claim that they identified the accused by claiming that by the time they reached the 'Chhani' of the deceased, it was day break time and there was sufficient light to facilitate identification of the accused. However the statement of P.W.3 make it abundantly clear that the occurrence took place during the dark hours of the night and there was no possibility in the absence of source of light to fix the identity of any person who allegedly was seen running away from the 'Chhani' of the deceased even if they reached there in time.

17- It is of significance that the F.I.R. as stated above specifically mentioned that the occurrence took place in the night intervening 29th and 30th August, 1999 as per the information received by the informant. The information was received by the informant at about 1-2 P.M. on 30-8-1999. The informant Teeka Ram (P.W.1) being the Pradhan of village Mullagaon in the vicinity of which in 'Sailana Tok' the various 'Channis' were situate could have been given information much earlier if the witnesses were really able to reach there in time at the place of the occurrence. Teeka Ram also

gave out that before preparing the written F.I.R. he met these witnesses namely Rajendra Singh, Teeka Ram son of Sita Ram and Jayendra Singh all of whom have come to the village at about 10-11 A.M. on that day (30-8-1999) and gave information to him about the occurrence. These witnesses appearing in the village as late as 10-11 A.M. on that day itself support the above inference that the occurrence having taken place during the dead hour of the night and the murder being blind none was aware about the incident and when in the late hours of the morning Smt. Bei Dei deceased was found dead the information was carried to the village Pradhan as late as in the afternoon of 30-8-1999 and then report was prepared and given to the concerned authority for action. It also need to be motioned that the deceased's daughter Smt. Mansha Devi (P.W.6) also gave out that on receiving the information she reached the 'Chhani' of her mother at about 10-12 O'clock in the day and this also indicate that none was aware of the commission of the murder of the lady and when in the late hours of the morning it came to be known the information was carried to all concerned including this witness who then went to the 'Chhani' of the deceased and found her lying dead there. The evidence, the circumstances and the topography of the place of the occurrence cumulatively lead to the inference that the occurrence in all probability had taken place in the dark hours of the night and since none had any inkling of it the report was got to be lodged through the village Pradhan, P.W.1 against the accused on mere suspicion and this was the reason that it was specifically mentioned in the F.I.R. that the murder might have been committed by the accused Bachan Singh.

18- Learned Sessions Judge while appreciating the evidence of these witnesses formed an opinion that the occurrence took place some time in the early hours of the morning and the witnesses having reached there were able to fix the identity of the accused as the person running away from the rear door of the 'Chhani' of Smt. Bei Dei deceased and it was then found that the deceased had already been murdered by strangulating her by neck. We fail to subscribe to this inference drawn by the learned Sessions Judge

particularly in the face of the evidence as stated above and the fact that the occurrence took place in the dark hours of the night and there being no source of light there was hardly any occasion to fix the identity of the accused running away from there and further that we are not convinced that the witnesses had reached there in time to see some one running from the rare door of the 'Chhani' of the deceased after committing the murder of the victim. We are thus convinced that this important incriminating circumstance was not satisfactorily proved by the evidence on record.

19- The incriminating circumstance mentioned the serial No.6 above should not have been taken to be established against the accused merely on the ground that Smt. Bel Dei used to remain all alone in her 'Chhani' and since she had no enemy other than the accused there was no likelihood of any other person coming there to commit her murder. The reason is that the answer to the earlier mentioned circumstances itself indicate that the accused was not entertaining any grudge or enmity against his mother in law Smt.Bel Dei. It is of significance that Smt. Mansha Devi (P.W.6) herself stated that she was not aware as to why the accused has committed the murder of her mother. She further stated that perhaps the accused may be having an eye on the landed property of the deceased and for this reason the murder might have been committed by the accused. We fail to lay our hand to any piece of the evidence which may remotely suggest that the accused wanted his mother-in-law to give him some property or land and therefore on mere surmise it should not have been accepted that the accused was entertaining enmity against Smt. Bei Dei and therefore he was the only person who could have committed her murder. Therefore, in our view there was no motive for the crime to have been committed by the accused and the incriminating circumstance in that regard also was not satisfactorily proved by the evidence on record.

20- The last circumstance pertain to the claim that accused went absconding from the village Mullagaon and was arrested as late as on 20-9-1999 from the cave on Andrada Dande by the Investigating Officer with the help of the villagers. No arrest memo was prepared

and was brought on record to support the allegation. The evidence on record has not been found satisfactory about the claim of the prosecution that the accused has returned to the village Mullagaon before the occurrence and therefore the allegation that the accused was not available there after the occurrence should not have been taken to be an incriminating circumstance against him. There is also no corroborative evidence on record that he was running here and there to avoid his arrest and that he was so arrested ultimately as stated by the Investigating Officer. In our view this was also not a strong incriminating circumstance to connect the accused with the crime in question and the same could not have been taken to be a link in the chain of the circumstances pointing to the guilt of the accused.

21- Lastly as was pointed out by the learned counsel for the accused it is of significance that the name of none of the three witnesses of the fact find place in the written F.I.R. Ext. Ka.1 was prepared by the informant Teeka Ram (P.W.1) after his meeting with those three witnesses who according to the prosecution saw the accused running away from the rear door of the 'Chhani' of the deceased soon after these witnesses reached there and in a situation like this if all this was told to the informant by the witnesses their names were naturally to be mentioned in the F.I.R. instead of mentioning that the information of the murder was given by one Kamal Das who was not examined as a witness in the case. In the face of the facts of the case this omission assume significance and we find it safe to accept the argument of the learned counsel for the accused that the F.I.R., the very substratum of the prosecution story do not corroborate the prosecution version and support the claim of the witnesses. Further the witnesses of the fact being close relatives of the victim were highly interested and their evidence being infirm and discrepant, it could not have been made basis for drawing inference in favour of the prosecution as regards the alleged incriminating circumstances. In our considered view the evidence of the witnesses being not able to response confidence about their trustworthiness the benefit of doubt should have been extended to the accused particularly when the evidence was not sufficient to

satisfactorily prove the circumstances against him. We, therefore do not subscribe to the view and inference drawn by the learned Sessions Judge and find it justified to give the benefit of doubt to the accused and to acquit him of the charge levelled against him. In other words the appeals succeed and are to be allowed.

22- The appeals are allowed. The judgment dated 27-7-2000 is set aside. Accused Bachan Singh is not held guilty and is acquitted of the charge under Section 302 I.P.C. He is in jail. He shall be released forthwith, if not wanted in any other case.

23- Let the record be sent back to the court concerned for compliance to be reported to the Court within a month.

(B.S. Verma, J.) **(Irshad Hussain, J.)**

ISB